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2010 Report on International Religious Freedom - Kenya

[Covers the period from July 1, 2009, to June 30, 2010]

The constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion.

The government generally respected religious freedom in practice. There was no change in the status of respect for religious freedom by the government during the reporting period; however, some Muslim leaders continued to charge that the government is hostile toward Muslims.

While there were few reports of societal abuse or discrimination based on religious affiliation, belief, or practice, some Muslims perceived themselves as treated as second-class citizens in the predominantly Christian country. Christian leaders also complained of perceived discrimination in the historically Muslim areas of Coast and North Eastern Province.

The U.S. government discusses religious freedom with the government as part of its overall policy to promote human rights.

Section I. Religious Demography

The country has an area of 225,000 square miles and a population of 39 million. Approximately 80 percent of the population is Christian and 10 percent is Muslim. Groups that constitute less than 1 percent of the population include Hindus, Sikhs, and Baha'is. The remainder follows various indigenous religions. Protestants are 58 percent of Christians, with 42 percent Roman Catholics.

North Eastern Province, where the population is predominantly ethnic Somali, is home to 15 percent of the Muslim population. Sixty percent of the Muslim population lives in eastern Coast Province, making up 50 percent of the population there. Western areas of Coast Province are mostly Christian. The upper part of Eastern Province is home to 10 percent of the country's Muslims, mostly ethnic Borana but also some Somalis, where they are the majority religious group. Apart from a small ethnic Somali Muslim population in Nairobi, the rest of the country is largely Christian.

Upper Eastern, North Eastern, and Coast provinces, which together are home to approximately 75 percent of the Muslim population, were less developed than other parts of the country.

Section II. Status of Government Respect for Religious Freedom

Legal/Policy Framework

The constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion.

The constitution and the 1967 Kadhis' Courts Act establish a venue for the adjudication of certain types of civil cases based on Islamic law. The constitution provides for Kadhi courts in situations where "all the parties profess the Muslim religion" in suits addressing "questions of Muslim law relating to personal status, marriage, divorce, or inheritance." However, the secular high court has jurisdiction over civil or criminal proceedings, including those in the Kadhi courts; any decision can be directly appealed to the high court. In May 2010 the constitutional court ruled that the inclusion of Kadhi courts in the constitution and the use of state funds in support of the Kadhi court system, is illegal. The attorney general immediately appealed the ruling, and the case continued at the end of the reporting period.

Some Christian groups argued that the constitution's inclusion of the federally funded Kadhi courts gave preferential treatment to Muslims. The National Council of Churches Kenya filed a 2004 lawsuit contesting the legality of the Kadhi courts, which was upheld by the constitutional court in a May 2010 ruling. The ruling was immediately appealed; the case continued at the end of the reporting period.

The government observes the following religious holidays as national holidays: Good Friday, Easter Monday, Eid al-Fitr, Christmas, and Diwali. Although Eid al-Adha was observed as a national holiday before the 2007 election, the government subsequently did not take the necessary steps to make the holiday permanent.

The Ministry of Information and Communications routinely approved regional radio and television broadcast licenses for Christian and Muslim groups. The ministry has not granted the petition of the Catholic Church for a national frequency; however, the ministry has not granted a national frequency to any media organization except the government owned Kenya Broadcasting Corporation

The government required new religious organizations to register with the Registrar of Societies, which reported to the Office of the Attorney General. The government allowed indigenous religious organizations to register, although many chose not to do so. After registration, religious organizations may apply for tax exempt status, including exemption from paying duty on imported goods. Religious organizations generally received equal treatment from the government; however, some small splinter groups found it difficult to register when the government viewed them as an offshoot of a larger religious organization. The government outlawed and refused to register the Mungiki sect as a quasireligious criminal organization.

Practicing witchcraft with intent to cause fear, annoyance, or injury in mind, person, or property is a criminal offense under colonial era laws; however, persons generally were prosecuted for this offense only in conjunction with some other charge, such as murder, or to preempt vigilante action against them.

Restrictions on Religious Freedom

The government generally respected religious freedom in practice. There was no change in the status of respect for religious freedom by the government during the reporting period.

Some Muslim leaders charged that the government was hostile toward Muslims. According to Muslim leaders, authorities rigorously scrutinized the identification cards of persons with Muslim surnames, particularly ethnic Somalis, and sometimes required additional documentation of citizenship, such as birth certificates of parents and even grandparents. The government stated that the heightened scrutiny was an attempt to deter illegal immigration rather than to discriminate against ethnic Somalis or their religion; however, there were reports that the government arbitrarily arrested Muslim men as terrorist suspects. For example, in September 2009 the Muslim Human Rights Forum (MHRF) alleged that five Muslims suspected by the government of involvement in terrorist activity were abducted by the Anti-Terrorist Police Unit and subsequently disappeared; however, the MHRF provided no further proof of the alleged abductions.

Muslim leaders also accused the government of using the pretense of fighting terrorism to arrest and deport Muslim scholars to curtail Muslim proselytizing. In January 2010 the

government deported Sheikh Abdullah al Faisal, a Jamaican-born Muslim cleric, for preaching sermons advocating violence.

In July 2009 President Kibaki received a report prepared by the Presidential Action Committee to Address Specific Concerns of the Muslim Community in Regard to Alleged Harassment and/or Discrimination in the Application/Enforcement of the Law. The report supported the claims of discrimination in the issuance of identity documents and passports to Muslims and found that counterterrorism operations violated existing national laws. The report also found that Muslims were unlawfully deported to foreign countries, Muslim communities did not have fair access for obtaining land title deeds, and that the Kadhi courts were inadequately funded.

Abuses of Religious Freedom

In January 2010 demonstrations by Muslims protesting the detention of Sheikh Abdullah al Faisal turned violent when protesters clashed with onlookers and street merchants. Police fired upon the protesters, killing two, while one police officer was shot and wounded by protesters. The government charged Al-Amin Kimathi, chairman of the MHRF, with incitement to violence for his role in organizing the protests.

The government continued to restrict the religious activities of Mungiki. In March 2009 unidentified gunmen, reportedly acting on orders from the commissioner of police, shot and killed Oscar Kamau King'ara, the executive director of the local nongovernmental organization (NGO) Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK), and Paul Oulu, OFFLACK's program coordinator. On the day of the killings, government spokesman Alfred Mutua accused OFFLACK of being a front for Mungiki, the country's largest criminal organization, and criticized OFFLACK's role in providing information on extrajudicial killings of Mungiki members to the UN special rapporteur. In 2008 OFFLACK reported that police were linked with the continued disappearance and deaths of suspected Mungiki members. Police threatened and intimidated witnesses to the killings, and four witnesses went into exile. The prime minister requested international assistance to investigate the killings, but the minister for foreign affairs subsequently rejected such assistance, and no credible investigation had been conducted at the end of the reporting period.

Local Christian organizations reported that individuals who converted to Christianity from Islam, particularly individuals of Somali ethnic origin, were often threatened with violence or death by Muslim religious leaders and their families. These threats prompted some individuals to go into hiding.

Muslim human rights activists continued to call for the disbandment of the Anti-Terrorism Prevention Unit, alleging that it was engaging in a systematic campaign of harassment that specifically targeted Muslims, including extortion of businessmen and theft during raids.

There were no reports of religious prisoners or detainees in the country, although the government detained youth suspected of being members of the Mungiki sect. These individuals were detained for suspected criminal activity and not religious belief.

Forced Religious Conversion

There were no reports of forced religious conversion.

Section III. Status of Societal Respect for Religious Freedom

There were few reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Inter-marriage between members of Christian denominations is common, and interfaith prayer services occurred frequently. Inter-marriage between Muslims and Christians, although less frequent, was also socially acceptable; however, some spouses were asked to convert to Islam as a precondition for the marriage. Some Muslims perceived themselves to be treated as second-class citizens in a predominantly Christian country and believed that the government and business communities deliberately impeded development in predominantly Muslim areas.

There were multiple reports from Kisii District and in Nyanza and Western provinces of abuse and killings of persons suspected of practicing "witchcraft." (Witchcraft in this context refers to a range of traditional practices that may have a religious component.) Local authorities sometimes responded by making arrests after killings of suspected witches or by placing those suspected of witchcraft in protective custody to prevent lynching. Government officials routinely denounced vigilantism against suspected witches but also claimed to initiate crackdowns against those practicing traditional medicine. Victims of these crimes were often elderly; perpetrators were often youth and were sometimes related to the victims. Many of these incidents, which perpetrators claimed were aimed at suppressing the practice of witchcraft, appeared to have been efforts to pursue other agendas, such as obtaining access to property owned by the victims or settling family disputes.

Section IV. U.S. Government Policy

The U.S. government discusses religious freedom with the government as part of its overall policy to promote human rights.

